Read v. Begbie
No. 02-15270

RYMER, J., dissenting.

Although the force used on Read may seem infelicitous *in hindsight*, I disagree that the officers are not entitled to qualified immunity based on their reasonable perspective *at the time*. The officers went to the house after receiving a 911 call reporting a violent domestic disturbance. Just as the combatants were separated, Read pulled up in her car, spoke briefly to one officer, and hustled toward the house. At this point, a different officer (Cardella) noticed Read for the first time. He and another officer standing nearby had no idea who Read was, why she was there, whether she had permission to enter the house, or what she planned to do once inside. She did not tell the officers who Dylan was. It is undisputed that Cardella told Read to "stop" and to identify herself, although Read claimed that she didn't hear him. When she kept on going into the house, the officers ran after her. They put her on a couch. Read was yelling and screaming. They tripped and handcuffed her. She said she couldn't stand up so the officers lifted her to her feet. In the process, Read's head was jarred and her skin was broken by the handcuffs.

As it turns out, Read did not actually pose an immediate threat to the safety of the officers or anyone inside the house. It is unfortunate that Cardella did not

know that she was there to retrieve her son or that Read did not hear him shout "stop." But the question is whether the force was reasonable "from the perspective of a reasonable officer on the scene," *Forrester v. City of San Diego*, 25 F.3d 804, 808 (9th Cir. 1994), not whether it seems unreasonable to us knowing all that we now know. Based on the circumstances surrounding Read's dash into the house, the officers were justified in using some minimally intrusive level of force to detain her while they figured out what was going on. *See Jackson v. City of Bremerton*, 268 F.3d 646, 651 (9th Cir. 2001) (officers entitled to deference when using force under tense, uncertain, and rapidly evolving circumstances). Neither *Mendoza v. Block*, 27 F.3d 1357 (9th Cir. 1994), nor *Watkins v. City of Oakland*, 145 F.3d 1087, 1090 (9th Cir. 1998), suggests otherwise; they involved canine attacks. A canine attack is in no way comparable to tripping and handcuffing. We have already held that this level of force is minimally intrusive. *Cf. Jackson*, 268 F.3d at 652 (defendant suffered only a "minimal" intrusion when she was sprayed with pepper spray, pushed to the ground, handcuffed, pulled to her feet, and placed in an overheated police car). Finally, the fact that the officers could have possibly used even less force is irrelevant so long as the amount actually used was reasonable. *See Forrester*, 25 F.3d at 807. It was, so the officers are entitled to qualified immunity.